Response of the Netherlands – European Commission consultation document on the review of the Prospectus Directive

This is a joint reaction of the Netherlands Ministry of Finance, the Netherlands Authority for the Financial Markets and the Dutch Central Bank, each institution with their own role and responsibilities. Please note that this reaction is subject to a parliamentary reserve.

<u>Response to questions in the consultation paper</u>

I. Introduction

Questions:

(1) Is the principle, whereby a prospectus is required whenever securities are admitted to trading on a regulated market or offered to the public, still valid? In principle should a prospectus be necessary for:

- **admission to trading on a regulated market**
- **an offer of securities to the public?**

Should a different treatment should be granted to the two purposes (i.e. different types of prospectus for an admission to trading and an offer to the public). If yes, please give details.

The Netherlands Ministry of Finance and the Netherlands Authority for the Financial Markets (AFM) both believe that a prospectus should be required for the admission to trading on a regulated market and an offer of securities to the public. Without a prospectus, investors will lack the necessary information to make an informed investment decision, such as information about the assets and liabilities, financial position, profit and losses, and prospects of the issuer and of any guarantor, and of the rights attaching to such securities.

However, the Netherlands is concerned that the Prospectus Directive may no longer be fit for purpose. Research by the AFM among investors indicates that less than 4 out of 10 retail investors in the Netherlands use the prospectus when deciding about a public securities offering, while more than half of retail investors use brochures and websites. We are therefore concerned that prospectuses are not being used by many retail investors and, therefore, do not adequately protect investors.

(2) In order to better understand the costs implied by the prospectus regime for issuers:
a) Please estimate the cost of producing the following prospectus

- **equity prospectus**
- **non-equity prospectus**
- **base prospectus**
- **initial public offer (IPO) prospectus**

The Netherlands has chosen to only provide a narrative response to this question due to the differences in the costs for different types of issuers. This narrative response can then illustrate the relevant differences. For example, we understand from one Dutch market party that SMEs offering less than € 2.5 million of equity securities to the public would incur approximately €100,000 in costs, while these costs could rise to approximately € 140,000 if more than € 2.5 million of equity securities were offered to the public. According to this market party, these costs will not change based on whether an equity prospectus, a non-equity prospectus, a base prospectus or an IPO prospectus is produced.

In order to demonstrate the extreme differences in the costs implied by the prospectus regime for an SME and a large company, it is useful to refer to the specific costs identified in the prospectus relating to the IPO of D.E Master Blenders 1753 N.V. dated 1 June 2012. The prospectus states that the costs related to this IPO are in total $ 30,195,000. The largest costs relate to the legal fees and costs ($ 4,600,000), accounting fees ($ 20,800,000), transfer agent and related fees ($ 2,400,000), the listing fee ($ 945,000) and the printing costs ($ 750,000). While the accounting costs were influenced by the need to draft special purpose financial statements in this

transaction, this does help to illustrate the large differences in costs in different sorts of transactions.

The costs relating to base prospectuses and other base prospectus are also lower than the costs related to an IPO. According to one market party, the legal fees start at approximately € 50,000 in legal fees for base prospectuses used to issue fixed and floating rate notes. Additionally, a comfort letter will be provided by an accountant in relation to such base prospectuses and such comfort letters cost approximately € 10,000. Once a base prospectus used to issue fixed and floating rate notes has been finalized, issuers will incur at least € 10,000 in legal fees each year to update the base prospectus.

Base prospectuses relating to structured notes are more expensive and the legal fees associated with such base prospectuses start at € 200,000. Such prospectuses are also more expensive to update and we understand that it costs approximately € 150,000 to € 200,000 in legal fees each year to update the base prospectus, but such costs are determined by whether or not new products are added to the base prospectus of structured products.

It is our understanding that standalone non-equity prospectuses involve at least € 80,000 in legal fees and approximately € 20,000 in accountants' fees.

b) What is the share, in per cent, of the following in the total costs of a prospectus:

- **Issuer's internal costs: [*enter figure*]%**
- **Audit costs: [*enter figure*]%**
- **Legal fees: [*enter figure*]%**
- **Competent authorities' fees: [*enter figure*]%**
- **Other costs (please specify which): [*enter figure*]%**

We refer to our response to the previous question, which illustrates the differences in costs between transactions. Furthermore, we would also point out that the competent authorities' fees in IPOs are typically negligible when compared to the total costs involved in the entire IPO process.

What fraction of the costs indicated above would be incurred by an issuer anyway, when offering securities to the public or having them admitted to trading on a regulated market, even if there were no prospectus requirements, under both EU and national law?

Many of the costs associated with offering securities to the public or having them admitted to trading will likely have to be made even without the requirement to publish a prospectus. However, these costs may be lower due to the fact that there will be no costs associated with the approval of the prospectus by an NCA. Since it is our understanding that many offers of securities in which a prospectus is not required still publish an information memorandum for prospective investors, we would not expect all of the costs associated with the prospectus to disappear altogether. Furthermore, we would expect that many of the legal costs related to offering securities to the public or admitting them to trading will be made regardless of whether an issuer needs to comply with the relevant prospectus requirements.

More importantly, in some cases, there may be no obligation for some issuers to provide audited financial information since it is not required pursuant to the Prospectus Regulation. The costs associated with the accountant may therefore be lower. In that regard, it is important to note that provision of audited historical financial information appears to be one of the biggest hurdles for SMEs seeking to publish a prospectus approved by an NCA.

(3) Bearing in mind that the prospectus, once approved by the home competent authority, enables an issuer to raise financing across all EU capital markets simultaneously, are the additional costs of preparing a prospectus in conformity with EU rules and getting it approved by the competent authority are outweighed by the benefit of the passport attached to it?

The additional costs attached to preparing a prospectus in conformity with the EU rules and getting passported are outweighed by the passport for (large) companies that engage in offers of securities in multiple Member States. The current system of having a prospectus approved by one NCA and passported to other Member States is obviously cheaper and less complicated than having to have a prospectus approved by multiple NCAs.

However, smaller companies, such as SMEs, do not enjoy the benefits as greatly due to the fact that they typically offer their securities only in their national market and passport much less frequently. Furthermore, smaller issuers in the Netherlands tend to draw up their prospectuses and offering materials in Dutch, so it is much more costly to offer their securities in other jurisdictions due to the costs associated with translating the prospectus. This creates an additional barrier to offering securities in other jurisdictions.

II. ISSUES FOR DISCUSSION

A. When a prospectus is needed

A.1. Adjusting the current exemption thresholds

Questions

(4) The exemption thresholds in Articles 1(2)(h) and (j), 3(2)(b), (c) and (d), respectively, were initially designed to strike an appropriate balance between investor protection and alleviating the administrative burden on small issuers and small offers. Should these thresholds be adjusted again so that a larger number of offers can be carried out without a prospectus? If yes, to which levels? Please provide reasoning for your answer.

a) the EUR 5 000 000 threshold of Article 1(2)(h):

- Yes, from EUR 5 000 000 to EUR [*enter monetary figure***]**
- No
- **Don't know/no opinion**
Textbox: [justification]

No, while the Ministry of Finance and the AFM support the objectives of the Capital Markets Union and the creation of a pan European market for securities, we are of the opinion that the lower thresholds should be left to the discretion of Member States. This is due to the fact that such small offerings typically target retail investors. This is important because retail securities markets are still national markets with their own characteristics and preferences. It is therefore appropriate for Member States to have some flexibility in addressing issues in their own retail markets.

The Netherlands has currently set the threshold for the application of the Prospectus Directive at € 2.5 million. This ensures a high degree of investor protection. If this threshold were to be raised, then consideration needs to be given to the fact that SMEs are typically riskier investments and that the securities issued by SMEs are typically illiquid, making the prospectus even more important than normally might be the case.

If the threshold of € 2.5 million were to be raised, then safeguards will need to be put in place to ensure adequate investor protection in relation to these exempted offers of securities. Examples of such safeguards are a requirement that issuers must register with the NCA in the jurisdiction in which the exempted offering is taking place and minimum transparency requirements for exempted offerings of securities. Such requirements would only apply to offerings making use of the € 5,000,000 threshold.

b) the EUR 75 000 000 threshold of Article 1(2)(j):

- **Yes, from EUR 75 000 000 to EUR [***enter monetary figure***]**
- No
- **Don't know/no opinion**
Textbox: [justification]

No. The Netherlands is not aware of any issues with this threshold. Discussions with market parties in the Netherlands have confirmed this view.

c) the 150 persons threshold of Article 3(2)(b)

- **Yes, from 150 persons to [***enter figure***] persons**
- No
- **Don't know/no opinion**
Textbox:

No. The Netherlands is not aware of any issues with this threshold. Discussions with a broad range of market parties in the Netherlands have confirmed this view. There is also some concern that raising this exemption to a number higher than 150 persons could jeopardize investor protection.

d) the EUR 100 000 threshold of Article 3(2)(c) & (d)

- **Yes, from EUR 100 000 to EUR [***enter monetary figure***]**
- **No**
- **Don't know/no opinion**

Textbox: [justification]

No. The Netherlands is of the opinion that this threshold should remain at € 100,000. According to market parties in the Netherlands, this threshold works properly at this time. Furthermore, lowering this threshold would jeopardize investor protection since it would be easier for wealthy retail investors to buy complex debt securities, such as asset backed securities and hybrid debt instruments such as 'contingent convertibles'. The complexity of such securities make it difficult for retail investors to assess the risk of holding such securities. For example, investors need to be able to understand when they will no longer receive interest payments or their principal may be written off if they invest in 'contingent convertibles'.

Increasing this threshold is also undesirable since many of the other thresholds included in financial law in the Netherlands are also set at € 100,000. This helps to ensure legal certainty for market parties.

However, if any changes were to be made, we would be more inclined to increase this threshold to € 250,000. This change would arguably improve investor protection and help to ensure that retail investors are not buying certain types of debt securities. This position is based upon research conducted by the AFM that demonstrates that the € 100,000 threshold actually needs to be increased. This research shows that Dutch investors that are active on the primary markets invest an average of € 168,000, which implies that a number of retail investors are able to invest in securities with denominations of € 100,000 or more.

(5) Would more harmonisation be beneficial in areas currently left to Member States discretion, such as the flexibility given to Member States to require a prospectus for offers of securities with a total consideration below EUR 5 000 000?

Yes
No
Other areas:
Don't know/no opinion

Textbox: [justification **]**

No. The Netherlands generally supports the harmonization of rules at the level of the European Union. Such harmonization helps to ensure that investor protection is the same in all Member States, increases legal certainty and helps to avoid a 'race to the bottom'. However, in this particular case, the Netherlands is concerned that further harmonization of the rules would interfere with finding the correct balance between investor protection and access to the capital markets in the Netherlands, since it would be impossible to implement any additional safeguards for exempted offers. The Netherlands could eventually become more comfortable with further harmonization in this area if adequate safeguards were made in any harmonized rules for offerings of securities with a total consideration of below € 5,000,000.

(6) Do you see a need for including a wider range of securities in the scope of the Directive than transferable securities as defined in Article 2(1)(a)? Please state your reasons.

Yes
No
Don't know/no opinion

Textbox: [justification **]**

No. While the Netherlands appreciates that some Member States may have issues with offerings of non-transferable securities, we are not in favor of extending the scope of the Prospectus Directive to such instruments. We consider transferability to be an essential feature of proper investment opportunities in securities and in the best interest of investors. Therefore we are not in favor of expanding the scope of the Prospectus Directive to non-transferable securities.

(7) Can you identify any other area where the scope of the Directive should be revised and if so how? Could other types of offers and admissions to trading be carried out without a prospectus without reducing consumer protection?

Yes [*text box***]**
No
Other areas:
Don't know/no opinion

Textbox: [justification **]**

Yes. It is worth considering eliminating the requirement to publish a prospectus for listings of debt securities with denominations of € 100,000 or more on a regulated market. There are typically relatively few issues with such prospectuses. More importantly, since such prospectuses only relate to the listing of securities, the prospectus is only approved after the offering has taken place. This approach also takes into account the fact that professional parties typically issue such securities and that a higher level of responsibility may be expected from such parties.

We are aware of concerns from investors that there is no time to review offering documentation in relation to debt securities because the offering documentation is not available at the time of the offering or that there is only a very brief period in which to subscribe for the relevant securities. However, we do not think that prospectus supervision is the solution to this issue, since these offerings are exempted from the requirement to publish a prospectus in the first place.

A.2. Creating an exemption for "secondary issuances" under certain conditions

Questions

(8) Do you agree that while an initial public offer of securities requires a full-blown prospectus, the obligation to draw up a prospectus could be mitigated or lifted for any subsequent secondary issuances of the same securities, providing relevant information updates are made available by the issuer?

Yes
No
Don't know/no opinion

Textbox: [justification **]**

Yes. From our discussions with investors, it has become apparent that many prospectuses relating to secondary issuances contain superfluous information from the perspective of investors. This is due to the fact that significant amounts of information included in prospectuses have already been published and information is already included in the price of the securities on the market. As such, it would appear possible to require

less information to be included in prospectuses relating to securities that will be or have been issued by a company listed on a regulated market.

(9) How should Article 4(2)(a) be amended in order to achieve this objective ? Please state your reasons.

The 10% threshold should be raised to [*enter figure***]%**
The exemption should apply to all secondary issuances of fungible securities,
regardless of their proportion with respect to those already issued
No amendment
Don't know/no opinion

Textbox: [justification **]**

Don't know. Ideally the Netherlands believes that the exemption should be raised to a higher threshold than 10%. This is due to the fact that significant amounts of information included in prospectuses have already been published and this information is already included in the price of the securities on the market. However, in our discussions with several stakeholders, it has become apparent that they consider the 10% threshold to be appropriate since raising the threshold would mean that large amounts of shares could be listed without the publication of the prospectus. These investors are concerned that the funds acquired by issuing those shares could be used to finance a major acquisition or that the newly issued shares could be issued to a single entity so that existing investors are confronted with a new major shareholder. Additionally, eliminating some of the information requirements for listed companies could also already be used to relieve some of the burden on listed companies.

The prospectus does not deal with the corporate governance issues raised by investors such as large takeovers and being confronted with new major shareholders. This is due to the fact that the shares have already been placed and any price sensitive information relating to the issue of the shares, acquisition or major shareholder should have already been communicated to investors via a press release. We therefore believe that more consideration is necessary in relation to this issue in order to better take into consideration the value of prospectuses in relation to secondary issuances.

(10) If the exemption for secondary issuances were to be made conditional to a full-blown prospectus having been approved within a certain period of time, which timeframe would be appropriate?

[ ] years
There should be no timeframe (i.e. the exemption should still apply if a prospectus was approved ten years ago)
Don't know/no opinion

Textbox: [justification **]**

There should be no timeframe (i.e. the exemption should still apply if a prospectus was approved ten years ago). The Netherlands does not think that the last publication of a prospectus is the relevant criterion since a previously published prospectus does not take into account the new information that is interesting to investors. However, we would be willing to consider a system in which a registration document would be published each year by an issuers listed on a regulated market. This system could be similar to the system in France with '*documents de reference'*. The registration document could also substitute for the issuer's annual report in order to reduce the burdens on listed companies and to prevent the duplication of information in annual reports and prospectuses. A more limited securities note would then only need to be published by the issuer for secondary issuances.

A.3. Extending the prospectus to admission to trading on an MTF

Questions:

(11) Do you think that a prospectus should be required when securities are admitted to trading on an MTF? Please state your reasons.

Yes, on all MTFs
Yes, but only on those MTFs registered as SME growth markets
No
Don't know/no opinion

Textbox: [justification **]**

No. The fact that a prospectus is not required for the listing of securities on an MTF has not presented any practical difficulties in the Netherlands. This is due to the fact that the obligation to publishing a prospectus is already achieved by making the offering of securities to the public subject to the publication of a prospectus. The most important discussion in this regard is what information should be published so that an investor can make an investment decision. Additionally, consideration should be given to the distinction between regulated markets and MTFs before including any new requirements for listing securities on MTFs.

(12) Were the scope of the Directive extended to the admission of securities to trading on MTFs, do you think that the proportionate disclosure regime (either amended or unamended) should apply? Please state your reasons.

Yes, the amended regime should apply to all MTFs
Yes, the unamended regime should apply to all MTFs
Yes, the amended regime should apply but not to those MTFs registered as SME growth markets
Yes, the unamended regime should apply but not to those MTFs registered as SME growth markets
Yes, the amended regime should apply but only to those MTFs registered as SME growth markets
Yes, the unamended regime should apply but only to those MTFs registered as SME growth markets
No
Don't know/no opinion

Textbox: [justification **]**

Yes, the amended regime should apply but only to those MTFs registered as SME growth markets. The amended regime should also apply to all SMEs meeting the relevant criteria for its application. However, no requirement to publish a prospectus should be extended to other MTFs. The reason that the obligation to publish a prospectus is limited to SME growth markets is that otherwise no public information may be available for investors to base their investment decision and to facilitate the trading of the securities in the secondary market. In this respect we also refer to our response to question 17(b).

However, any proportionate regime must be based on an analysis of the information that an investor will need when deciding to purchase securities issued by an SME and how this information can be provided in a cost efficient manner for SMEs. Furthermore, such a regime must not jeopardize investor protection. As such, further analysis is necessary before such a regime is mandated, especially since the current regime included in Annex XXV of the Prospectus Regulation does not appear to be used very often.

In relation to the above, please see section 6.1 of ESMA's Technical Advice to the Commission on MiFID II and MiFIR dated 19 December 2014, which the Netherlands supports.

A.4. Exemption of prospectus for certain types of closed-ended alternative investment funds (AIFs)

Questions:

(13) Should future European long term investment funds (ELTIF), as well as certain European social entrepreneurship funds (EuSEF) and European venture capital funds (EuVECA) of the closed-ended type and marketed to non-professional investors, be exempted from the obligation to prepare a prospectus under the Directive, while remaining subject to the bespoke disclosure requirements under their sectorial legislation and to the PRIIPS key information document? Please state your reasoning, if necessary by drawing comparisons between the different sets of disclosure requirements which cumulate for these funds.

Yes, such an exemption would not affect investor/consumer protection in a significant way

No, such an exemption would affect investor/consumer protection

Don't know/no opinion

Textbox: [justification **]**

Don't know/no opinion. Further analysis should be completed before amending the disclosure requirements in relation to ELTIFs, EuSEFs and a EuVECAs in order to better assess which documentation investors are consulting before making an investment. The applicable disclosure can then be better adjusted to take into account investor preferences and the sorts of information included a prospectus, a KID and in the relevant sectorial requirements.

A.5. Extending the exemption for employee share schemes

Question

(14) Is there a need to extend the scope of the exemption provided to employee shares schemes in Article 4(1)(e) to non-EU, private companies ? Please explain and provide supporting evidence.

Yes

No

Don't know/no opinion

Textbox: [justification **]**

Don’t know / No opinion. We would be willing to consider this, but believe that more pressing issues relating to whether the Prospectus Directive is fit for purpose should be dealt with before more technical issues such as the exemption provided to employee share schemes.

A.6. Balancing the favourable treatment of issuers of debt securities with a high denomination per unit, with liquidity on the debt markets

Question

(15) Do you consider that the system of exemptions granted to issuers of debt securities above a denomination per unit of EUR 100 000 under the Prospectus and Transparency Directives may be detrimental to liquidity in corporate bond markets? If so, what targeted changes could be made to address this without reducing investor protection?

Yes

No

Don't know/no opinion

Textbox: [justification **]**

No. While it is true that the system of exemptions encourages some issuers to issue debt securities with denominations of € 100,000 or more, there is no evidence that eliminating the distinction between debt securities with denominations of € 100,000 or more and debt securities with lower denominations materially affects market liquidity.

Furthermore, there are significant concerns that eliminating the € 100,000 threshold could endanger investor protection, since the € 100,000 threshold helps to ensure that complex debt securities such as asset backed securities and hybrid debt securities such as 'contingent convertibles' are not sold to retail investors.

If you have answered yes, do you think that:
(a) the EUR100 000 threshold should be lowered?
- **Yes, to EUR [***enter monetary figure***]**
- **No**
- **Don't know/no opinion**
- **Textbox: [** justification **]**

Please see our answer to the initial question and to question 4(d).

(b) some or all of the favourable treatments granted to the above issuers should be removed?
- **Yes, please indicate to what extent : [ ]**
- **No**
- **Don't know/no opinion**
- **Textbox: [** justification **]**

Yes. The distinction in the information requirements for debt securities with denominations of € 100,000 or more and debt securities with lower denominations could be eliminated. We would propose to apply Annexes IV and V regardless of the denomination of the debt securities. The reason to require the application of Annex IV in particular is that this annex requires the publication of additional information about the issuer, which may be necessary in relation to prospectuses concerning relatively unknown issuers for which little public information is available. We also do not think that providing the additional information will be too burdensome for other issuers. In our experience, prospectuses relating to securities with denominations of € 100,000 or more already include the information that is required pursuant to these annexes. Even if this is not the case, we do not think that it will be that difficult for issuers to supply the additional information.

(c) the EUR 100 000 threshold should be removed altogether and the current exemptions should be granted to all debt issuers, regardless of the denomination per unit of their debt securities?
- **Yes**
- **No**
- **Don't know/no opinion**
- **Textbox: [** justification **]**

No. Our discussions with a broad range of stakeholders and the observations of the AFM lead us to believe that the current € 100,000 threshold is working properly. Furthermore, we are convinced that the € 100,000 threshold is necessary for the protection of retail investors. Otherwise, it will be too easy for retail investors to purchase complex debt securities, such as asset backed securities and hybrid debt instruments. This is particularly the case in the Netherlands, where we have a relatively large execution only market. As stated earlier in our response to question 4(d), we would actually be more inclined to raise the € 100,000 threshold than to lower it or to eliminate it altogether.

B. The information a prospectus should contain

B.1. Proportionate disclosure regime

Questions

(16) In your view, has the proportionate disclosure regime (Article 7(2)(e) and (g)) met its original purpose to improve efficiency and to take account of the size of issuers? If not, why?

Yes
No
Don't know/no opinion

Textbox: [justification **]**

No. The proportionate disclosure regime is rarely used. One of the main issues with the proportionate disclosure regime appears to be the fact that SMEs have difficulty in producing audited financial information for inclusion in prospectuses while Annex XXV of the Prospectus Regulation does nothing to alleviate this issue. However, it is appropriate to require audited financial information in prospectuses due to the nature of offering securities to the public. It would therefore be appropriate to explore alternative means of allowing SMEs to provide sufficient disclosure so that investors can make a well-considered investment decision.

(17) Is the proportionate disclosure regime used in practice, and if not what are the reasons? Please specify your answers according to the type of disclosure regime.

a) Proportionate regime for rights issues

- **Yes**
- **No**
- **Don't know/no opinion**
- **Textbox: [** justification **]**

No. The proportionate disclosure is rarely used. We understand that this is for several reasons:

- There are rarely rights issues in the Netherlands, so that the regime is rarely applied.
- Banks involved in transactions require that full disclosure is provided in relation to liability issues. According to one bank that was consulted, the only way to change this approach would be to require the proportionate disclosure regime to be applied in relation to all rights issues, all offerings of debt securities by credit institutions referred to in Article 1(2)(j) of Directive 2003/71/EC and all offerings of securities by SMEs and companies with reduced market capitalization and to disallow the application of other annexes.
- There are signals that investors may also prefer receiving full disclosure from companies, so that issuers are less likely to use the proportionate disclosure regime since this could impact the success of any offering.

b) Proportionate regime for small and medium-sized enterprises and companies with reduced market capitalisation

- **Yes**
- **No**
- **Don't know/no opinion**
- **Textbox: [** justification **]**

No. The proportionate disclosure is also rarely used. We understand that this is for several reasons:

- Banks involved in transactions require that full disclosure is provided in relation to liability issues. According to one bank that was consulted, the only way to change

this approach would be to require the proportionate disclosure regime to be applied when it is applicable.
- There are some signals that investors may also prefer receiving full disclosure from companies, so that issuers are less likely to use the proportionate disclosure regime since this could impact the success of any offering.
- The proportionate disclosure regime still requires audited financial statements from issuers. SMEs have difficulty in producing this audited financial information and seek to offer their securities via exemptions to the requirement to publish a prospectus or do not offer securities to the public at all.

c) Proportionate regime for issues by credit institutions referred to in Article 1(2)(j) of Directive 2003/71/EC
- **Yes**
- **No**
- **Don't know/no opinion**
- **Textbox: [** justification **]**

No. The proportionate disclosure is also rarely used. We understand that this is for several reasons:
- Banks involved in transactions require that full disclosure is provided in relation to liability issues. According to one bank that was consulted, the only way to change this approach would be to require the proportionate disclosure regime to be applied when it is applicable.
- There are signals that investors may also prefer receiving full disclosure from companies, so that issuers are less likely to use the proportionate disclosure regime since this could impact the success of any offering.

(18) Should the proportionate disclosure regime be modified to improve its efficiency, and how? Please specify your answers according to the type of disclosure regime.

a) Proportionate regime for rights issues
Textbox: [ ]

No modifications are necessary.

b) Proportionate regime for small and medium-sized enterprises and companies with reduced market capitalisation
Textbox: [ ]

We are currently discussing how the proportionate regime for SMEs and companies with reduced market capitalization can be further streamlined without endangering investor protection. However, we are unsure as to how this can be done, since:
- Prospectuses relating to SMEs are important (and relatively well read) due to the lack of information available in the market concerning SMEs. We are therefore cautious when eliminating disclosure requirements for these companies.
- SMEs have a higher risk profile than larger companies. With this in mind, it is counterintuitive to reduce the disclosure requirements for these companies.
- Some SMEs are probably seeking financing in the capital markets due to the lack of bank financing. There is some concern that the riskiest SMEs are supposed to be funded via retail investors due to the fact that professional parties, such as banks, are not providing them funding due to problems with their business model or financial situation.

Nevertheless, it is worth considering how SMEs could be funded via the capital market since there may be a need and SMEs are extremely important for the European economy. As such, it may be useful to explore a disclosure regime for SMEs that falls outside of the Prospectus Directive. However, such an approach may not be allowed to endanger

investor protection. Additional safeguards will therefore likely be necessary to ensure adequate investor protection.

c) Proportionate regime for issues by credit institutions referred to in Article 1(2)(j) of Directive 2003/71/EC
Textbox: [ ]

The Netherlands would welcome a critical review of the functioning of and actual need for this regime. As such, we have no comments. However, the Netherlands believes that priority should be given to creating a system of investment in SMEs that is more flexible, but that does not endanger investment protection.

(19) If the proportionate disclosure regime were to be extended, to whom should it be extended?
To types of issuers or issues not yet covered? Please specify: [text box]

It is worth streamlining the information requirements for all secondary issuances as opposed to only rights issues. A proportionate regime could help to avoid the duplication of information in prospectuses relating to listed companies for whom a great deal of information is already known in the market via the requirements set out in MAD and the TD.

To admissions of securities to trading on an MTF, supposing those are brought into the scope of the Directive? Please specify: [text box]

Please see our response to question 12.

Other. Please specify: [text box]

No comment.

Don't know/no opinion
Textbox: [justification **]**

B.2. Creating a bespoke regime for companies admitted to trading on SME growth markets

Questions

(20) Should the definition of "company with reduced market capitalisation" (Article 2(1)(t)) be aligned with the definition of SME under Article 4(1)(13) of Directive 2014/65/EU by raising the capitalisation limit to EUR 200 000 000?
Yes
No
Don't know/no opinion
Textbox: [justification **]**

Yes. We think that the definitions should be harmonized in order to avoid confusion and promote legal certainty.

(21) Would you support the creation of a simplified prospectus for SMEs and companies with reduced market capitalisation admitted to trading on an SME growth market, in order to facilitate their access to capital market financing?
Yes
No, the higher risk profile of SMEs and companies with reduced market capitalization justifies disclosure standards that are as high as for issuers listed on regulated markets.
Don't know/no opinion

Textbox: [justification **]**

The Netherlands would be willing to think constructively about a separate prospectus regime for SMEs provided that that regime provides an adequate level of investor protection. Please see our response to questions 12 and 18 b. Please also see section 6.1 of ESMA's Technical Advice to the Commission on MiFID II and MiFIR dated 19 December 2014, which the Netherlands supports.

(22) Please describe the minimum elements needed of the simplified prospectus for SMEs and companies with reduced market capitalisation admitted to trading on an SME growth market.
Textbox: [justification **]**

Investing in securities issued by SMEs will often mean investing in relatively illiquid securities issued by entities with a higher risk profile. We think that it is important that investors realize the risks associated with investing in SMEs if they decide to invest in companies admitted to trading on an SME growth market. Furthermore, it is important to realize that the information is relevant when investing in an SME may be similar to the information in a 'full' prospectus. However, we would hope that a regime for SME and companies with reduced market capitalization would result in shorter, more comprehensible prospectuses that would be more accessible to retail investors than the current prospectus regime.

B.3. Making the "incorporation by reference" mechanism more flexible and assessing the need for supplements in case of parallel disclosure of inside information

Questions:

(23) Should the provision of Article 11 (incorporation by reference) be recalibrated in order to achieve more flexibility? If yes, please indicate how this could be achieved (in particular, indicate which documents should be allowed to be incorporated by reference)?

Yes
No
Don't know/no opinion

Textbox: [justification **]**

Yes. Article 11 of the Prospectus Directive and Article 28 of the Prospectus Regulation should be amended so that they are consistent. The regime should also be liberalized in order to provide relief for companies drafting prospectuses. Placing further restrictions on the types of document that can be incorporated by reference will only increase the costs for drawing up prospectuses for companies that are not listed on a regulated market, such as SMEs.

(24) (a) Should documents which were already published/filed under the Transparency Directive no longer need to be subject to incorporation by reference in the prospectus (i.e. neither a substantial repetition of substance nor a reference to the document would need to be included in the prospectus as it would be assumed that potential investors have anyhow access and thus knowledge of the content of these documents)? Please provide reasons.

Yes
No
Don't know/No opinion

Textbox [justification]

Yes. The Netherlands proposes to have a register or requiring issuers listed on a regulated market to have a web page on which all regulated information relating to the issuer for a period of the last three years can be found. All financial information, press

releases relating to price sensitive information and other regulated information published by the issuer in relation to MAD, the TD, and the Prospectus Directive would be published in one place. Such information would not need to be incorporated by reference.

However, due consideration would need to be given to the language of the information on the website and amendments will need to be made to the relevant legislation to achieve this simplification. It may be worth taking the time to make such changes since this could help to reduce the length of prospectuses as well as to reduce the duplication of information in prospectuses. This could help to encourage investors to actually use prospectuses when making an investment decision.

(b) Do you see any other possibilities to better streamline the disclosure requirements of the Prospectus Directive and the Transparency Directive?
Yes
No
Don't know/No opinion
Textbox [justification]

Please see the answer to part (a) of this question.

(25) Article 6(1) Market Abuse Directive obliges issuers of financial instruments to inform the public as soon as possible of inside information which directly concerns the said issuers; the inside information has to be made public by the issuer in a manner which enables fast access and complete, correct and timely assessment of the information by the public. Could this obligation substitute the requirement in the Prospectus Directive to publish a supplement according to Article 17 without jeopardising investor protection in order to streamline the disclosure requirements between Market Abuse Directive and Prospectus Directive?
Yes
No
Don't know/No opinion
Textbox [justification]

Yes. The updating of a prospectus with a supplement relating to information that has already been published in a press release only works to increase the administrative burden on the issuer and arguably does not improve investor protection since the information in the supplement is already known to the market. We also expect investors to be more likely to read a press release than a supplement to a prospectus.

The AFM and the Ministry of Finance have discussed this issue with market parties in the Netherlands. Based on these discussions we conclude that any withdrawal rights can be explicitly included in the press release that would substitute for a supplement.

(26) Do you see any other possibility to better streamline the disclosure requirements of the Market Abuse Directive and the Prospectus Directive?
Yes
No
Don't know/No opinion
Textbox [justification]

No opinion.

B.4. Reassessing the objectives of the prospectus summary and addressing possible overlaps with the key information document required under the PRIIPs Regulation

Questions

(27) Is there a need to reassess the rules regarding the summary of the prospectus?
(Please provide suggestions in each of the fields you find relevant)

> **a) Yes, regarding the concept of key information and its usefulness for retail investors**
> **b) Yes, regarding the comparability of the summaries of similar securities**
> **c) Yes, regarding the interaction with final terms in base prospectuses**
> **d) No.**
> **e) Don't know/no opinion**

Textbox: [justification **]**

Yes. Investors have informed the AFM that they use summaries, but that the current format makes summaries difficult to read and to compare with other summaries included in prospectuses relating to similar securities. The current summary regime also works to encourage issuers to include information that is not central to the investment decision.

The current system of including a summary for specific issues made under a base prospectus is also problematic for several reasons. Most importantly, the current practice of including a single summary in a base prospectus with placeholders that will need to be filled in at a later date results in summaries in base prospectuses that are difficult to comprehend or even unreadable.

(28) For those securities falling under the scope of both the packaged retail and insurance-based investment products (PRIIPS) Regulation, how should the overlap of information required to be disclosed in the key investor document (KID) and in the prospectus summary, be addressed?

> **a) By providing that information already featured in the KID need not be duplicated in the prospectus summary. Please indicate which redundant information would be concerned : [textbox]**
> **b) By eliminating the prospectus summary for those securities.**
> **c) By aligning the format and content of the prospectus summary with those of the KID required under the PRIIPS Regulation, in order to minimise costs and promote comparability of products**
> **d) Other: [textbox]**
> **e) Don't know/no opinion**

Textbox: [justification **]**

The KID should be included as part of the summary in order to avoid the duplication of information in prospectuses. Besides the KID, the summary should also provide information concerning the issuer, since the KID does not provide for such information.

B.5. Imposing a length limit to prospectuses

Questions

(29) Would you support introducing a maximum length to the prospectus? If so, how should such a limit be defined?

> **Yes, it should be defined by a maximum number of pages and the maximum should be [figure] pages**
> **Yes, it should be defined using other criteria, for instance: [textbox]**
> **No**
> **Don't know/no opinion**

Textbox: [justification **]**

No. Any limit to the length of a prospectus will be arbitrary.

(30) Alternatively, are there specific sections of the prospectus which could be made subject to rules limiting excessive lengths? How should such limitations be spelled out?
Textbox: [ ]

We think that this issue can be dealt with by not allowing the inclusion of information that has already been published to be included in prospectuses (unless such information needs to be updated). Furthermore, consideration should be given to limiting the amount of legalese and disclaimers included in prospectuses.

B.6. Liability and sanctions

Questions:
(31) Do you believe the liability and sanctions regimes the Directive provides for are adequate? If not, how could they be improved?

	Yes	**No**	**No opinion**
the overall civil liability regime of Article 6		**X**	
the specific civil liability regime for prospectus summaries of Article 5(2)(d) and Article 6(2)			**X**
the sanctions regime of Article 25		**X**	

Textbox: The Netherlands believes that the liability and sanctions regimes in the Prospectus Directive can be improved. In our opinion this is due to the fact that different Member States have different levels of investor protection. This leads to several issues:

- Level playing field: certain Member States may be more attractive because issuers will be less likely to be liable for damages. Furthermore, some Member States have rules of civil law (and civil procedure) that may be difficult for investors from other Member States to understand if those investors need to institute legal proceedings in that jurisdiction.
- Issuers may avoid multijurisdictional offerings of securities: There are signals that some issuers are avoiding issuing securities in multiple jurisdictions to legal issues and the fear of having multiple legal proceedings in multiple jurisdictions.

In order to truly have integrated capital markets in Europe, it is important to ensure that the liability regime works in a way that ensures adequate investor protection across the European Union, while ensuring that issuers are willing to issue securities in each Member State.

Despite not being satisfied with the current liability and sanctions regime in the Prospectus Directive, the Netherlands is concerned that many of the issues that need to be dealt with are matters of civil law. As such, it is questionable whether it is possible to deal with this issue (in the short run) without the European Union involving itself in matters that are in the purview of Member States. Furthermore, it is important that any efforts to improve international private law in order to address issues relating to multijurisdictional offers of securities do not jeopardize investor protection.

The response lists the liability for the summary as 'no opinion', because the Netherlands acknowledges that issuers appear to need the liability to attach to the prospectus as a whole as opposed to the summary in order to be comfortable drawing up summaries that

do not include all of the information in the prospectus. However, it is worth considering whether issuers should be liable for not including the most material information and risks in the summary since this would force issuers to make a conscious analysis of what the most important information is in relation to a particular issue of securities. This would help to ensure that investors can read the most important information – from the perspective of the issuer – in the summary, as opposed to reading the exhaustive information in the prospectus as a whole.

(32) Have you identified problems relating to multi-jurisdiction (cross-border) liability with regards to the Directive? If yes, please give details.

Yes
No
Don't know/no opinion
Textbox: [justification **]**

Yes. Please see our response to Question 31.

C. How prospectuses are approved

C.1. Streamlining further the approval process of prospectuses by national competent authorities (NCAs)

Questions:

(33) Are you aware of material differences in the way national competent authorities assess the completeness, consistency and comprehensibility of the draft prospectuses that are submitted to them for approval? Please provide examples/evidence.

Yes
No
Don't know/no opinion

Textbox: [justification **]**

Both the Ministry of Finance and the AFM have received reports of certain jurisdictions adopting certain practices in order to facilitate the market. However, we think that further analysis would be necessary in order to judge whether the differences in procedures result in different outcomes or if the approaches of NCAs to prospectus supervision are not compatible with the Prospectus Directive.

However, we would like to point out that market parties in the Netherlands have attempted to persuade the AFM to change its approval policies and strategy for prospectus supervision in order to better compete with other markets. It is undesirable to allow such competition to occur. It currently appears that there may be competition in relation to the speed of the review of prospectuses and the costs associated with the review of prospectuses that may be distorting the common market. Some market parties in the Netherlands have suggested that the costs and review times in relation to prospectus supervision should be further harmonized within the European Union. However, we would urge caution before adopting such an approach since there needs to be some room for NCAs to determine their own priorities and that there can always be circumstances in which NCAs will need additional time to review prospectuses.

(34) Do you see a need for further streamlining of the scrutiny and approval procedures of prospectuses by NCAs? If yes, please specify in which regard.

Yes
No
Don't know/no opinion

Textbox: [justification **]**

The Netherlands believes that it is appropriate to await the outcomes of any work that has been conducted by ESMA in this regard before making far reaching conclusions about further streamlining the scrutiny and approval procedures of NCAs. There is concern that measures could unintentionally make the approval process more complex for SMEs due to the imposition of new legislative requirements. Please see also our response to Question 33.

(35) Should the scrutiny and approval procedure be made more transparent to the public? If yes, please indicate how this should be achieved.

Yes
No
Don't know/no opinion

Textbox: [justification **]**

No. This topic has been discussed with market parties and there is great reluctance from both investors and issuers to demand that comments from NCAs are published. Such an approach could be damaging to market parties, since there are occasionally sensitive

discussions that take place when reviewing prospectus that may, for instance, lead investors to incorrectly consider an issue to be more important than it actually is.

There are no other signals concerning specific areas relating to the scrutiny and approval process that market parties would consider lacking transparency in the approval process.

(36) Would it be conceivable to allow marketing activities by the issuer in the period between the first submission of a draft prospectus and the approval of its final version, under the premise that no legally binding purchase or subscription would take place until the prospectus is approved? If yes, please provide details on how this could be achieved.
Yes
No
Don't know/no opinion
Textbox: [justification **]**

Yes. This is already possible under the Prospectus Directive.

(37) What should be the involvement of NCAs in relation to prospectuses? Should NCAs:

- **a) review all prospectuses ex ante (i.e. before the offer or the admission to trading takes place)**
- **b) review only a sample of prospectuses ex ante (risk-based approach)**
- **c) review all prospectuses ex post (i.e. after the offer or the admission to trading has commenced)**
- **d) review only a sample of prospectuses ex post (risk-based approach)**
- **e) Other**
- **f) Don't know/no opinion**

Please describe the possible consequences of your favoured approach, in particular in terms of market efficiency and invest protection.
Textbox: [justification **]**

Other. The Netherlands believes that a risk based approach should be taken in relation to the review of prospectuses. However, this does not mean that only samples of prospectuses should be reviewed either ex ante or ex post. The review of prospectuses should focus on the most important information for investors in that prospectus. This information will typically be the information relating to the risk and return associated with specific securities. We also generally take into account the most recent information concerning an issuer and the characteristics of the offering in order to make a risk assessment. This approach allows NCAs to focus on the most important issues for investors in relation to a specific issuer or securities, as opposed to simply checking the boxes that the information required pursuant to the relevant annexes of the Prospectus Regulation has been included in a prospectus.

(38) Should the decision to admit securities to trading on a regulated market (including, where applicable, to the official listing as currently provided under the Listing Directive), be more closely aligned with the approval of the prospectus and the right to passport? Please explain your reasoning, and the benefits (if any) this could bring to issuers.

Yes
No
Don't know/no opinion

Textbox: [justification **]**

Yes. As much of the Listing Directive is already obsolete, we would propose folding up the Listing Directive into the Prospectus Directive.

(39) (a) Is the EU passporting mechanism of prospectuses functioning in an efficient way? What improvements could be made?

Yes

No

Don't know/no opinion

Textbox: [justification **]**

Yes. There are currently no issues of which the Netherlands is aware.

(b) Could the notification procedure set out in Article 18, between NCAs of home and host Member States be simplified (e.g. limited to the issuer merely stipulating in which Member States the offer should be valid, without any involvement from NCAs), without compromising investor protection?

Yes

No

Don't know/no opinion

Textbox: [justification **]**

No, unless this was managed via a single European register. Without having the prospectus notified to the host Member State, the Member State will not be able to post the prospectus in its register of passported prospectuses and will not be notified of offerings and listings of securities in its jurisdiction.

C.2. Extending the base prospectus facility

Question:

(40) Please indicate if you would support the following changes or clarifications to the base prospectus facility. Please explain your reasoning and provide supporting arguments:

	I support	**I do not support**	**Justify**
a) The use of the base prospectus facility should be allowed for all types of issuers and issues and the limitations of Article 5(4)(a) and (b) should be removed		**X**	The Netherlands does not support expanding the use of base prospectuses due to the complexity of these documents and the difficulties that investors have understanding them.
b) The validity of the base prospectus should be extended beyond one year	**X** **Please indicate the appropriate validity length:** 24 months		The Netherlands is open to extending the validity of the base prospectus to 24 months in order to reduce costs for frequent issuers. However, it may be worth considering only extending the validity of the securities note to 24 months and having the registration document only be valid for a period of 12 months since the information concerning

			the issuer is most likely to change.
c) The Directive should clarify that issuers are allowed to draw up a base prospectus as separate documents (i.e. as a tripartite prospectus), in cases where a registration document has already been filed and approved by the NCA	**X**		The Netherlands does not believe that tripartite base prospectuses materially affect investor protection.
d) Assuming that a base prospectus may be drawn up as separate documents (i.e. as a tripartite prospectus), it should be possible for its components to be approved by different NCAs	**X**		The Netherlands agrees with this proposal. This should not materially weaken investor protection and should reduce administrative burdens on issuers.
e) The base prospectus facility should remain unchanged		**X**	Please see our previous answers.
f) Other (please specify) [textbox]	The Netherlands believes that base prospectuses for the issue of structured products are too complex for retail offerings. As such, it is worth considering whether base prospectus are an effective instrument for providing transparency to investors in relation to these securities. As such, consideration should be given to an alternative means of offering structured products to the public on a regular basis that does not rely on a base prospectus.		

C.3. The separate approval of the registration document, the securities note and the summary note ("tripartite regime")

Question:

(41) How is the "tripartite regime" (Articles 5 (3) and 12) used in practice and how could it be improved to offer more flexibility to issuers?
Textbox: [ ]

The tripartite regime is only used on a very limited basis by issuers under the supervision of the AFM. However, the use of tripartite prospectuses could be facilitated by allowing for the passport of registration documents. This would also help to lower costs for issuers since NCAs will need to review the RD unless the NCA has approved it themselves, since it is currently only a document that can be incorporated by reference.

C.4. Reviewing the determination of the home Member State for issues of non-equity securities.

Question:

(42) Should the dual regime for the determination of the home Member State for nonequity securities featured in Article 2(1)(m)(ii) be amended? If so, how?

a) No, status quo should be maintained.

b) Yes, issuers should be allowed to choose their home Member State even for
non-equity securities with a denomination per unit below EUR 1 000.

c) Yes, the freedom to choose the home Member State for non-equity securities with a denomination per unit above EUR 1 000 (and for certain non-equity hybrid securities) should be revoked.

Textbox:

No, the status quo should be maintained. The criteria for determining the home Member State also appear to function at this time and, to some extent, help to frustrate any race to the bottom.

C.5. Moving to an all-electronic system for the filing and publication of prospectuses

Questions:

(43) Should the options to publish a prospectus in a printed form and by insertion in a newspaper be suppressed (deletion of Article 14(2)(a) and (b), while retaining Article 14(7), i.e. a paper version could still be obtained upon request and free of charge)?

Yes
No
Don't know/no opinion

Textbox:

Yes. The requirement to publish a prospectus in printed form and by insertion in a newspaper is antiquated and making PDF copies available should generally be sufficient. However, we think that it is still appropriate to send investors a copy of a prospectus free of charge since some investors may not have access to a computer.

(44) Should a single, integrated EU filing system for all prospectuses produced in the EU be created? Please give your views on the main benefits (added value for issuers and investors) and drawbacks (costs)?

Yes
No
Don't know/no opinion

Textbox:

Yes. Such an approach would ensure that investors have access to all of the regulated information in one place on a regulator's website. However, we are concerned about the flexibility and costs associated with such a register. Additionally, such a register should also be user friendly and avoid the complexities associated with registers in other jurisdictions.

Furthermore, such a register should be more ambitious than only including prospectuses, but should relate to all information relating to listed companies published in relation to the MAR, TD and the PD.

(45) What should be the essential features of such a filing system to ensure its success?

Textbox:

The register should be easy for investors and issuers to use, i.e. it should be easily searchable with clear names for types of documents. Burdensome costs and file formats should be avoided. We would suggest reviewing registers used by other securities regulators to determine the most important features of such a register.

C.6. Equivalence of third-country prospectus regimes

Questions:

(46) Would you support the creation of an equivalence regime in the Union for third country prospectus regimes? Please describe on which essential principles it should be based.

Yes

No

Don't know/no opinion

Textbox:

No opinion. Both the Ministry of Finance and the AFM do not think that this should currently be the priority in any review of the Prospectus Directive, since there are more pressing issues concerning the functioning of the current regime.

(47) Assuming the prospectus regime of a third country is declared equivalent to the EU regime, how should a prospectus prepared by a third country issuer in accordance with its legislation be handled by the competent authority of the Home Member State defined in Article 2(1)(m)(iii)?

a) Such a prospectus should not need approval and the involvement of the Home Member State should be limited to the processing of notifications to host Member States under Article 18

b) Such a prospectus should be approved by the Home Member State under Article 13

c) Don't know/no opinion

Textbox:

Such a prospectus should not need approval and the involvement of the Home Member State should be limited to the processing of notifications to host Member States under Article 18. If such an approach would not be taken then the regime will probably not be used to its full potential since issuers will not want to present investors in different jurisdictions with materially different disclosure for liability reasons.

Final questions:

(48) Is there a need for the following terms to be (better) defined, and if so, how:

a) "offer of securities to the public"
Yes
No
Don't know/no opinion
Textbox:

No. The Netherlands has not had particular issues with this term, but is not necessarily opposed to better defining these terms.

b) "primary market" and "secondary market"?
Yes
No
Don't know/no opinion
Textbox:

No. The Netherlands has not had particular issues with this term, but is not necessarily opposed to better defining these terms.

(49) Are there other areas or concepts in the Directive that would benefit from further clarification?

No, legal certainty is ensured
Yes, the following should be clarified: [ ]
Don't know/no opinion

Textbox:

No, legal certainty is ensured. While there are issues that can be dealt with, we consider that the primary focus should be whether the Prospectus Directive is still fit for purpose. Other issues should only be dealt with once the Prospectus Directive is once again fit for purpose.

(50) Can you identify any modification to the Directive, apart from those addressed above, which could add flexibility to the prospectus framework and facilitate the raising of equity or debt by companies on capital markets, whilst maintaining effective investor protection? Please explain your reasoning and provide supporting arguments.

Yes
No
Don't know/no opinion

Textbox:

No.

(51) Can you identify any incoherence in the current Directive's provisions which may cause the prospectus framework to insufficiently protect investors? Please explain your reasoning and provide supporting arguments.

Yes
No
Don't know/no opinion
Textbox:

Yes. Despite the requirement that a prospectus is presented in an easily analyzable and comprehensible form, there are signals that investors (including professional investors) have difficulty understanding prospectuses. It is therefore conceivable that prospectuses may not allow investors to make an informed assessment of the assets and liabilities,

financial position, profit and losses, and prospects of the issuer and of any guarantor, and of the rights attaching to such securities.

Ideally, the 'target group' (i.e. the target audience for a specific security) should determine the appropriate level of disclosure in prospectuses. This can help to ensure that investors are presented with the appropriate level of comprehensibility in prospectuses and that the information included in prospectuses is matched to the needs of the target audience. Additionally, articles 16 (3) and 24 (2) in MiFID II contain specific requirements for investment firms and credit institutions concerning 'target groups'. The characteristics of the target group must be accounted for in investment firms' and credit institutions' distribution strategy. As such, these requirements should be integrated into the Prospectus Directive in order to harmonize the legal requirements relating to these products. The Prospectus Directive should also include grounds for withholding the approval of a prospectus in the event that an investment firm's or credit institution's distribution strategy is not appropriate for the target audience of the securities.

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